

**STATE OF NEW MEXICO  
BEFORE THE ENVIRONMENTAL IMPROVEMENT BOARD**

**IN THE MATTER OF:**

**PROPOSED NEW REGULATION**

**No. EIB 21-27 (R)**

***20.2.50 Oil and Gas Sector – Ozone Precursor Pollutants***

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**CLOSING ARGUMENT, FINAL PROPOSED RULES, AND STATEMENT OF  
REASONS OF KINDER MORGAN, INC. AND ITS SUBSIDIARIES AND AFFILIATES,  
EL PASO NATURAL GAS COMPANY, L.L.C., TRANSCOLORADO GAS  
TRANSMISSION CO., LLC, AND NATURAL GAS PIPELINE COMPANY OF  
AMERICA, LLC**

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Pursuant to the Procedural Order on Post-Hearing Process dated November 19, 2021, as amended on November 22, 2021, Kinder Morgan, Inc. and its subsidiaries and affiliates, El Paso Natural Gas Company, L.L.C., TransColorado Gas Transmission Co., LLC, and Natural Gas Pipeline Company of America, LLC (collectively, “Kinder Morgan”) submit to the Environmental Improvement Board (the “Board”) this closing argument (“Closing Argument”) in the matter of proposed new regulation 20.2.50 NMAC – Oil and Gas Sector – Ozone Precursor Pollutants, No. EIB 21-27 (R) (“Proposed Rules”). Kinder Morgan attaches to this Closing Argument as **Exhibit A** its proposed final version of the Proposed Rules and statements of reasons supporting each of Kinder Morgan’s final proposals. **Exhibit A** shows proposed final revisions to the version of the Proposed Rules dated January 18, 2022 and distributed by the New Mexico Environment Department (the “Department”) on the same date (the “January 18 Draft”).

**INTRODUCTION**

Kinder Morgan provides energy transportation and storage services in a safe, efficient, and environmentally responsible manner for the benefit of individuals, communities, public institutions and businesses. Pre-Filed Non-Technical Statement filed July 28, 2021 (“Non-

Technical Statement”), at 6. In New Mexico, we operate approximately 3,595 miles of transmission pipelines and own assets in 23 counties, including certain counties that will be subject to the Proposed Rules. *Id.* at 6–7. In New Mexico alone, Kinder Morgan employs approximately 180 individuals, maintains a payroll of over \$16.6 million, and pays approximately \$8.8 million annually to local and state taxing bodies. *Id.* at 7. Kinder Morgan’s operations are integral to the health and welfare of New Mexico and its communities because we deliver affordable and dispatchable pipeline quality natural gas to local distribution companies—the city gates for the distribution of natural gas for use in people’s homes for heating, stoves, water heaters, and other essential uses—and to industrial end users. *Id.*

Kinder Morgan prioritizes the protection of public health, safety, welfare, and the environment throughout its operations. *Id.* at 8. Kinder Morgan is a founding member of One Nation’s Energy Future (“ONE Future”), a unique and voluntary coalition made up of members across the natural gas industry focused on identifying policy and technical solutions to improve the management and reduction of methane emissions associated with the production, gathering, processing, transmission, and distribution of natural gas. *Id.* ONE Future’s goal is to enhance the energy delivery efficiency of the natural gas supply chain by limiting energy waste and achieving a total methane emission rate of less than one percent of gross natural gas production. *Id.* The ONE Future coalition represents the entire natural gas value chain, with members from some of the largest natural gas production (upstream), gathering and processing (midstream), and transmission and distribution (downstream) companies in the United States.<sup>1</sup> *Id.* at 9.

In connection with Kinder Morgan’s membership in ONE Future, it joined the Environmental Protection Agency’s (“EPA’s”) Methane Challenge program in 2016. *Id.* As part

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<sup>1</sup> The transmission segment is sometimes referred to as midstream, however, the critical point is that the transmission segment follows (and is not a part of) the natural gas gathering and boosting and natural gas processing segments.

of this program, Kinder Morgan committed to achieving a methane emission intensity<sup>2</sup> target of 0.31% by 2025. *Id.* In 2020, Kinder Morgan achieved an emission intensity of 0.04%. *See* Kinder Morgan, 2020 Environmental, Social, and Governance Report, at 28, available at <https://www.kindermorgan.com/getmedia/b87cb3e5-d8d5-4d42-8e27-dd66c895768d/2020-ESG-Report.pdf>. Surpassing the 0.31% intensity target by such a wide margin reflects the depth of the company’s commitment to reduce emissions from its operations. For the period 2018–2020, Kinder Morgan achieved voluntary reductions in carbon dioxide equivalent emissions of 6.7 million metric tons and voluntary reductions in methane emissions of 14.2 billion cubic feet, resulting in an estimated \$46 million in natural gas saved. *See id.* at 27.

Kinder Morgan has participated at every stage of this proceeding. On July 20, 2020, the Department released a preliminary draft of a significant rule to control ozone precursor emissions—specifically nitrogen oxides (“NO<sub>x</sub>”) and volatile organic compounds (“VOCs”)—from certain oil and gas facilities. Petition for Regulatory Change filed May 6, 2021 (“Petition”), at 3. Kinder Morgan provided comment in response to that preliminary draft, and met with the Department to discuss its comments on the Proposed Rules on March 23, 2021. The Department then filed a rulemaking petition on May 6, 2021, asking that the Board docket the matter and schedule a public hearing to consider the Proposed Rules. Petition, at 1. The Board granted the Petition on June 7, 2021. Order of Hearing Determination and Hearing Officer Appointment dated June 7, 2021.

The Board established a schedule for the submission of technical testimony, set the hearing in the matter of the Proposed Rules to commence on September 20, 2021, and appointed Felicia Orth to serve as hearing officer in the matter. *Id.* Consistent with the Board’s ordered schedule, Kinder Morgan filed a Notice of Intent to Present Direct Technical Testimony on July 28, 2021,

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<sup>2</sup> In this context, “intensity” means emissions per volume of throughput, and it is expressed as a percentage.

comprising a total of ten exhibits (Exhibits I–X) and 18 attachments (Attachments A–R) (“Direct NOI”) and filed a Notice of Intent to Present Rebuttal Technical Testimony on September 7, 2021, comprising a total of eight additional exhibits (Exhibits XI – XVIII) and ten additional attachments (Attachments S–BB) (“Rebuttal NOI”). Kinder Morgan also filed the Non-Technical Statement on July 28, 2021. Hearing Officer Orth admitted Kinder Morgan’s Exhibits I–XVIII and Attachments A–BB into evidence on September 23, 2021. Hearing Transcript, Vol. 4, 1203:6-8.

### **SUMMARY OF ARGUMENT**

Given the scope of Kinder Morgan’s operations in the state of New Mexico, the Proposed Rules have the potential to directly and significantly impact the company, and could impact the end users that the company serves. Accordingly, and consistent with our commitment to environmentally responsible energy transportation, our participation in this proceeding has been grounded in rigorously analyzing our operations to identify technically feasible and economically reasonable emissions reductions from our New Mexico operations. This process has enabled us to offer comments for improvement of the Proposed Rules designed to ensure that the final rules are reasonable, are grounded in law and sound public policy, and recognize operational limitations specific to the transmission segment of the oil and gas industry.

Over the course of this proceeding, the Department and other parties were responsive to many of the concerns raised in Kinder Morgan’s testimony. As a result, we were pleased that, as the Proposed Rules pertain to the transmission segment, there were only a few disputed issues required to be addressed during the hearing. During the hearing, the majority of these disputed issues were resolved through certain additional positive changes to the Proposed Rules that the Department implemented, which are critically important to the transmission segment. As a result, in this Closing Argument, we (1) briefly describe one limitation on the Board’s consideration of the evidence before it, (2) identify both the priority rule provisions and the more-minor rule

provisions that Kinder Morgan asks the Board to adopt as proposed in the January 18 Draft, (3) discuss a single remaining rule provision for which Kinder Morgan requests revisions to the January 18 Draft, and (4) raise one additional matter for the Board's consideration.

In brief, Kinder Morgan sets out the following positions in this Closing Argument:

1. (No revisions requested; Unrelated to specific rule language). The scope of this rulemaking is limited to reducing emissions of ozone precursors—NO<sub>x</sub> and VOCs. While Kinder Morgan does not dispute that methane emission reductions will result as a co-benefit of reducing NO<sub>x</sub> and VOC emissions from oil and gas sources, the Proposed Rules cannot be predicated on methane emission reductions.
2. (No revisions requested; Request the Board adopt the Proposed Rules). In recognition that the transmission segment is distinct from other segments of the natural gas supply chain, the Department made certain key changes to the Proposed Rules that Kinder Morgan asks the Board to adopt. These include changes to the sections of the Proposed Rules addressing compressor seals, equipment leaks and fugitive emissions, pig launching and receiving, and pneumatic controllers and devices.
3. (No revisions requested; Request the Board adopt the Proposed Rules). The Department proposed important changes to the section of the Proposed Rules addressing engines and turbines that Kinder Morgan asks the Board to adopt. In particular, Kinder Morgan asks the Board to adopt Tables 1, 2, and 3 and to adopt the two alternative compliance options, as set out in 20.2.50.113 NMAC of the January 18 Draft.
4. (No revisions requested; Request the Board adopt the Proposed Rules). Kinder Morgan supports the Department's decision during hearing to strike the portion of 20.2.50.112.B.(2) NMAC (General Provisions) requiring monthly monitoring and its

incorporation of this change into the Proposed Rules, as reflected in the January 18 Draft. Kinder Morgan asks the Board to adopt this change.

5. (No revisions requested; Request the Board adopt the Proposed Rules). Kinder Morgan supports a number of more-minor revisions that the Department has made to the Proposed Rules over the course of this proceeding.
6. (Revisions requested). By statute, the Proposed Rules can only apply to areas in which ozone concentrations exceed 95% of the primary national ambient air quality standard (“NAAQS”) for ozone. Accordingly, the Proposed Rules cannot apply to sources located in Rio Arriba or Chaves counties.
7. (Additional matter unrelated to rule language). Kinder Morgan encourages the Board and the Department to work with EPA as EPA develops rules pursuant to its recent New Source Performance Standards (“NSPS”) proposals to ensure that—where there is overlap between the Proposed Rules and EPA’s forthcoming rules—oil and gas operators in New Mexico have a clear path to compliance with both.

We address each of these positions, in turn, below.

## **ARGUMENT**

### **I. The Board’s Statutory Authority for this Rulemaking is Limited to Regulating Emissions of NO<sub>x</sub> and VOCs.**

As described above, the statutory authority for this rulemaking is singularly focused on attaining and/or maintaining the NAAQS ozone standard. The statute authorizes the Board to “adopt a plan, including rules, to control emissions of oxides of nitrogen and volatile organic compounds to provide for attainment and maintenance of the standard.” N.M.S.A. § 74-2-5.C.

The Department's notice of rulemaking hearing in this matter reflects this limitation. NMED Ex. 112, at 1.

Rule proposals that call for control of air pollutants that do not mitigate ozone are beyond the Board's authority in this rulemaking. Throughout these proceedings, however, certain parties presented testimony related to reducing methane emissions from oil and gas facilities. *See, e.g.*, Hearing Transcript, Vol. 1, 54:2-9 (opening statement of Ms. Tannis Fox, counsel for Clean Air Advocates<sup>3</sup>); *id.* at 63:9-21 (opening statement of Ms. Elizabeth Paranhos, counsel for Environmental Defense Fund ("EDF")); *id.* at 80:13-17 (opening statement of Mr. Charles De Saillan, counsel for New Mexico Environmental Law Center). Methane is, indisputably, not an ozone precursor. *See* Petition, at 2 (describing methane reductions as a "co-benefit" of reducing emissions of ozone precursor pollutants). Nevertheless, Hearing Officer Orth admitted this testimony, subject to the continuing objection of Independent Petroleum Association of New Mexico. Hearing Transcript, Vol. 9, 2815:5–2816:7.

Kinder Morgan does not dispute that reducing methane emissions may result as a co-benefit of reducing VOC and NO<sub>x</sub> emissions because the molecules are intertwined in natural gas. Kinder Morgan does dispute, however, that any portion of the Proposed Rules can be predicated solely on reducing methane emissions. In other words, while the Board may acknowledge that methane emissions may be reduced as a result of the Proposed Rules, it may not, by statute, base its decisions as to particular requirements under the Proposed Rules on those reductions. Rather, any proposal must demonstrably contribute to attaining or maintaining the primary ozone standard. Otherwise, the proposal would not be designed "to provide for attainment and maintenance of the standard," and would be beyond the scope of EIB's authority under N.M.S.A. Section 74-2-5.C.

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<sup>3</sup> Clean Air Advocates is a coalition of entities participating in this proceeding as one party, comprising Conservation Voters New Mexico, Diné C.A.R.E., Earthworks, National Parks Conservation Association, Natural Resources Defense Council, San Juan Citizens Alliance, Sierra Club, 350 New Mexico, and 350 Santa Fe.

This view appears to be consistent with EDF’s position, counsel for which stated: “[W]e’re [not] asking the Board to directly regulate methane, nor to rely on methane reductions as the basis for a cost effectiveness analysis, nor to rely on any methane-only specific control technology.” Hearing Transcript, Vol. 8, 2345:23–2346:2. Accordingly, Kinder Morgan asks that the Board consider the evidence before it keeping in mind that this particular rulemaking is limited to regulating NO<sub>x</sub> and VOC emissions. Like Hearing Officer Orth, given the Board’s engagement and sophistication on this matter, we do not expect delineating between ozone precursor and methane emissions to be a problem, but offer these comments in an effort to avoid any confusion regarding the scope of this rulemaking.

**II. Kinder Morgan Requests That the Board Adopt the Following Rule Provisions Reflected in the January 18 Draft.**

**a. In Recognition that the Transmission Segment Is Fundamentally Different From Other Segments of the Natural Gas Supply Chain, the Department Made Certain Key Changes to the Proposed Rules that We Encourage The Board To Adopt.**

Transmission segment operations are distinct from upstream operations and midstream gathering and boosting and processing operations in a number of ways. *See* Direct NOI, Ex. V. First, natural gas in transmission systems is pipeline quality natural gas. *See id.* at 2. This natural gas has already been processed and has a much lower VOC content than the gas that is produced, transported, and processed at well production facilities, natural gas gathering and boosting compressor stations, and natural gas processing plants. *See id.* To illustrate, and as described in the Direct NOI, the average annual VOC content at all evaluated Kinder Morgan stations is less than 1%, and can be as low as 0.206%. *See id.*; *see also* Attachment B, at PDF p. 2 (Summary of Annual Average VOC Content). By contrast, the VOC content of natural gas before the natural gas enters the transmission segment (*e.g.*, as it is present at gathering and boosting stations and at

gas plants) is significantly higher than these percentages. Hearing Transcript, Vol. 8, 2441:24–2442:4.

Day-to-day operations in the transmission segment also typically differ from other industry segments. Direct NOI, Ex. V, at 2–3. For example, transmission pipelines are generally pigged less frequently than midstream sector gathering pipelines. *Id.* This is because transmission pipelines contain fewer liquids than midstream gathering lines due to the fact that the gas being transported in transmission pipelines has typically already been processed, and, even if the natural gas has not been processed, it is pipeline quality natural gas containing little liquid. *Id.* at 3.

Kinder Morgan’s comments presented throughout this proceeding have been focused in large part on ensuring that the Proposed Rules reflect the unique operations of the transmission segment. The Department has engaged thoughtfully with Kinder Morgan on these issues and, over the course of the rulemaking, has made a number of key changes to the Proposed Rules responsive to Kinder Morgan’s concerns. We describe these changes in the following subsections, and we invite the Board to affirm the Department’s good judgment and adopt the rule language discussed below.

***i. Compressor Seals (20.2.50.114 NMAC)***

In the version of the Proposed Rules dated December 16, 2021 and distributed by the Department on December 17, 2021 at approximately 11:38 A.M. Mountain Time (the “December 16 Draft”), the Department clarified that 20.2.50.114 NMAC does not apply to centrifugal compressors or reciprocating compressors located at transmission compressor stations. December 16 Draft, 20.2.50.114.A NMAC. The Department retained this provision in the January 18 Draft. January 18 Draft, 20.2.50.114.A NMAC. During the hearing, the Department’s witness explained that the Department agreed “to exclude transmission compressor stations from this section based on the very, very limited number of VOC emissions that are – occur as a result from – from those

facilities . . . .” Hearing Transcript, Vol. 6, 1850:12-15. Kinder Morgan respectfully requests that the Board adopt this change into the final rule.

As described above, the VOC content of the natural gas that Kinder Morgan transports is very low. Detailed analyses of data from Kinder Morgan’s operations shows that most of Kinder Morgan’s centrifugal wet seals emit 0 or close to 0 tpy of VOC from their degassing vents. Rebuttal NOI, Attachment Z. In light of these low emissions, controlling emissions from existing wet seals would almost certainly be cost-prohibitive. *Id.* Ex. XIV, at 2–3. Replacing wet seals with dry seals also presents cost concerns and could result in undesirable operational consequences that further exacerbate costs. *Id.* at 3–4.

***ii. Equipment Leaks and Fugitive Emissions (20.2.50.116 NMAC)***

On September 24, 2021, Kinder Morgan and EDF filed a joint proposal for leak detection and repair (“LDAR”) at transmission compressor stations. Notice of Joint Proposal Regarding Sur-Rebuttal Testimony of Kinder Morgan and EDF (Sept. 24, 2021) (“Joint Proposal”). Under the Joint Proposal, transmission compressor stations, regardless of potential to emit, would be afforded two compliance options for the frequency of monitoring under Paragraph (3) of Subsection C of 20.2.50.116 NMAC: (1) conduct quarterly monitoring, or (2) comply with equipment leak and fugitive emissions monitoring requirements set out in federal NSPS so long as such standards are at least as stringent as the NSPS OOOOa, 40 C.F.R. Part 60, as in existence on the effective date of the Proposed Rules. Joint Proposal, at 1–2.

The Department adopted the Joint Proposal in the December 16 Draft, and retained it in the January 18 Draft. Prior to this change, transmission compressor stations had been subject to the same LDAR inspection frequencies as gathering and boosting stations and natural gas processing plants. *See* Petition, Draft Proposed Rules, 20.2.50.116.C.(3)(b) NMAC. During the hearing, when asked if “the Department recognize[s] and agree[s] that the VOC content of natural

gas transported by a transmission compressor station is lower – much lower than the VOC content of gas moved in gathering and boosting and at gas plants,” the Department’s witness responded, “Yes.” Hearing Transcript, Vol. 8, 2441:24–2442:4. Next, when asked if the Department’s witness “agree[d], then, that it would be reasonable to treat transmission compressor stations differently than [gathering and boosting stations and natural gas processing plants] with respect to inspection frequency” under the LDAR rule proposal, the witness again responded, “Yes.” *Id.* at 2442:5-9. Consistent with this logic, the Department then stated that it supports the Joint Proposal. *Id.* at 2444:25–2445:4.<sup>4</sup> As noted above, the Joint Proposal is now reflected in the January 18 Draft at 20.2.50.116.C.(3)(d) NMAC. Kinder Morgan respectfully requests that the Board adopt the Joint Proposal in the final rule.

***iii. Pig Launching and Receiving (20.2.50.121 NMAC)***

In the version of the Proposed Rules that the Department submitted with its rebuttal technical testimony, the Department revised 20.2.50.121.C. NMAC to make clear that where pigging operations are conducted less frequently than once per month, monitoring of the pig launching or receiving operation is required only before and after the pigging operation. NMED Rebuttal Ex. 2, 20.2.50.121.C.(1) NMAC. The Department retained these changes in the January 18 Draft. January 18 Draft, 20.2.50.121.C.(1) NMAC. Kinder Morgan supports this clarification, and respectfully requests that the Board adopt it into the final rule.

Infrequent pigging in the transmission segment coupled with the low VOC content natural gas present in the transmission segment results in very low VOC emissions from transmission pigging operations. Rebuttal NOI, Ex. XVI at 1. In fact, Kinder Morgan presented data demonstrating that annual VOC emissions from pigging operations at certain of the company’s

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<sup>4</sup> The Department also acknowledged that stringency in the context of an LDAR program is a function of how frequently inspections are required, and that the Department’s goal with respect to LDAR at transmission compressor stations is that inspections will be conducted at least quarterly. Hearing Transcript, Vol. 8, 2445:5–2446:15.

compressor stations in 2020 and 2019 were all less than 0.04 tpy per compressor station. *Id.* at 1; *see also id.*, Attachment BB. As a result, the change that the Department implemented to this section will avoid transmission operators from having to conduct costly monthly monitoring with little if any corresponding emissions reduction benefit.

***iv. Pneumatic Controllers and Devices (20.2.50.122 NMAC)***

During the hearing, the Department reasonably decided to strike 20.2.50.122.B.(4).b. NMAC, which would have required existing controllers with access to commercial line power to be non-emitting within two years of the effective date of the Proposed Rules. The Department's witness explained that it "receive[d] a comment that [the earlier proposal was] problematic and in conflict with the requirements in Table 2." Hearing Transcript, Vol. 7, 2031:6-8. Accordingly, the witness explained that "the Department intends to strike that, that [sic] language, and have owners and operators of pneumatic controllers meet the requirement[s] of Table 1 and Table 2. That is more clear and that was the Department's intent." *Id.* at 2031:8-11. The deletion of this provision is now reflected in the January 18 Draft. January 18 Draft, 20.2.50.122.B.(4) NMAC. Kinder Morgan strongly supports this deletion, and respectfully requests that the Board adopt the deletion into the final rule.

Table 1 of 20.2.50.122.B. NMAC sets out a schedule for operators of well sites, tank batteries, and gathering and boosting stations to achieve a certain percentage of non-emitting pneumatic controllers across their operations. January 18 Draft, 20.2.50.122.B.(3) NMAC. Table 2 sets out a similar schedule for operators of transmission compressor stations and gas processing plants, but establishes more aggressive targets for percentages of non-emitting pneumatic controllers that operators of these sources must achieve. *Id.* During hearing, the Department explained that this difference in treatment between well sites, tank batteries, and gathering and boosting stations, on the one hand, and transmission compressor stations and gas processing plants,

on the other, was “based on their access to [commercial] line power, primarily.” Hearing Transcript, Vol. 7, 2030:18-21.

Proposed 20.2.50.122.B.(4)(b) NMAC originally required that existing pneumatic controllers with access to commercial line electrical power must have an emission rate of zero. Petition, Draft Proposed Rules, 20.2.50.122.B.(4)(b) NMAC. In the Department’s version of the Proposed Rules dated September 16, 2021 (“September 16 Draft”), the Department amended this section to require achievement of this standard within two years of the effective date of the Proposed Rules. September 16 Draft, 20.2.50.122.B.(4)(b) NMAC.

During hearing, however, and as noted above, the Department acknowledged that this requirement would be problematic during implementation and would conflict with the requirements of Table 2. Hearing Transcript, Vol. 7, 2031:6-11. The Department explained that it intended to strike this requirement, confirming that it is the Department’s intent that operators of transmission compressor stations and gas processing plants will comply with the requirements of Table 2. *Id.*

EDF, Clean Air Advocates, Center for Civil Policy, and NAVA Education Project proposed an even more aggressive timeline for converting emitting pneumatic controllers located at these sources to non-emitting controllers. These groups proposed that all natural-gas driven pneumatic controllers located at transmission compressor stations and natural gas processing plants be retrofitted to be non-emitting within six months of the effective date of the Proposed Rules without regard to whether such sources have access to commercial line power (the “Pneumatics Alternate Proposal”). *See* Clean Air Advocates, Ex. 1, 20.2.50.122.B.(3), B.(5)(b) NMAC. Kinder Morgan opposed the Pneumatics Alternate Proposal during the rulemaking hearing, and continues to oppose it in this Closing Argument. *See* Rebuttal NOI, Ex. XVII, at 3. We continue to maintain that, if pneumatic controllers located at transmission compressor stations

are subject to the Proposed Rules, then operators of such sources should be permitted a reasonable period of time to retrofit their controllers, consistent with the Proposed Rules' treatment of other sources. *See id.*

In support of this position, Kinder Morgan offered testimony during hearing explaining that, even if a site—*e.g.*, a transmission compressor station—has access commercial line power, this does not necessarily mean that the station has adequate power to install additional equipment or sufficient infrastructure in place to route power to that additional equipment. Hearing Transcript, Vol. 7, 2282:24–2283:13. In light of these limitations, the Pneumatics Alternate Proposal to retrofit within six months is not reasonable or feasible. *Id.* at 2284:2-16. Moreover, even assuming that a site has adequate power in the right locations to install non-emitting controllers, the process to inventory existing controllers, and engineer and design retrofits would quickly exceed the proposed six-month timeline. *Id.* at 2284:17–2285:4. The fact that the Pneumatics Alternate Proposal would require retrofitting within six months even without regard to whether a site has access to commercial line power only exacerbates these concerns. *Id.* at 2285:5-17. When asked during cross-examination whether the witness for the proponents of the Pneumatics Alternate Proposal had “present[ed] technical data or analyze[d] the ability of an operator, assuming the six-month time frame, if a transmission compressor station would be required to modify or increase commercial electric power because that power source is inadequate for additional equipment,” the witness responded, “Not directly.” *Id.* at 2087:10-20. It appears, rather, that the proponents of the Pneumatics Alternate Proposal did not consider the practical implications of their proposal at all. Accordingly, Kinder Morgan asked and continues to ask the Board to reject the Pneumatics Alternate Proposal. *Id.* at 2286:5-8.

In sum, we support the Department's proposal to strike 20.2.50.122.B.(4)(b) NMAC so that the Table 2 schedule will govern the conversion to non-emitting controllers at transmission

compressor stations, and respectfully request that the Board adopt this deletion into the final rule.

*Id.* at 2282:1-13.

**b. The Department Proposed Important Changes to 20.2.50.113 NMAC (Engines and Turbines) That the Board Should Adopt.**

Over the course of the rulemaking process, the Department made certain key changes to its original proposed draft of 20.2.50.113 NMAC that are now reflected in the January 18 Draft. We discuss each of the key changes, in turn, below, and we respectfully request the Board adopt each.

***i. Tables 1, 2, and 3 (20.2.50.113.B. NMAC)***

In the draft of the Proposed Rules that the Department submitted with its rebuttal technical testimony, the Department modified the emission standards set out in Table 1 (applicable to existing natural gas-fired spark-ignition engines), Table 2 (applicable to new natural gas-fired spark ignition engines), and Table 3 (applicable to new and existing natural gas-fired combustion turbines). *See* NMED Rebuttal Ex. 2, 20.2.50.113.B. NMAC. Based on testimony presented at the hearing, the Department further modified the emission standards in Table 3 in the December 16 Draft to reflect certain limitations on controlling emissions from turbines < 4,100 bhp. *See* December 16 Draft, 20.2.50.113.B. NMAC. The Department retained all of these changes in the January 18 Draft. January 18 Draft, 20.2.50.113.B. NMAC. Kinder Morgan supports the emissions standards set out in Tables 1, 2, and 3 as proposed in the January 18 Draft, and respectfully requests that the Board adopt these tables as proposed by the Department.

In response to the Department's original proposal for the emission standards applicable to engines and turbines, Kinder Morgan submitted technical testimony demonstrating that certain of the standards for existing reciprocating engines and combustion turbines would require cost-ineffective and in some cases technically infeasible retrofits. Direct NOI, Ex. VI, at 7–9. Following the Department's submission of direct technical testimony, Kinder Morgan submitted testimony rebutting certain of the Department's cost estimates and assumptions related to these

retrofits. *See* Rebuttal NOI, Ex. XIII. Specifically regarding the proposed standards for existing and new turbines with ratings below 4,000 bhp, Kinder Morgan also submitted detailed technical testimony demonstrating that achieving these standards would require a prohibitively expensive modification called selective catalytic reduction (“SCR”). Direct NOI, Ex. VI, at 10–14; Rebuttal NOI, Ex. XIII, at 1–2, 7–8.<sup>5</sup> Furthermore, the New Mexico Oil and Gas Association (“NMOGA”) presented extensive testimony regarding the Department’s proposed engines and turbines standards, which Kinder Morgan adopted by reference. *See* NMOGA Direct NOI, Appendix A3 (Direct Testimony of Justin Lisowski, Technical Report Regarding 20.2.50.113 NMAC); Non-Technical Statement, at 10 (adopting all NMOGA filings by reference); Direct NOI, Ex. X, 20.2.50.113 NMAC (adopting NMOGA’s proposed revisions by reference); Rebuttal NOI, at 3 (adopting NMOGA’s rebuttal technical testimony by reference).

In response to this and other testimony, the Department made a number of changes to Tables 1, 2, and 3 of 20.2.50.113 NMAC, ultimately finalizing its proposal that is reflected in the January 18 Draft. In so doing, the Department rejected certain proposals of the National Park Service (“NPS”) related to the NO<sub>x</sub> standards for engines and turbines. NPS proposed for existing natural gas-fired spark-ignition engines: (i) adding NO<sub>x</sub> standards for ≤ 1,000 bhp lean-burn engines, (ii) adding a NO<sub>x</sub> standard for ≤ 500 bhp rich-burn engines, and (iii) lowering the originally proposed 0.50 g/bhp-hr standard applicable to rich-burn engines > 1,000 bhp to 0.20 g/bhp-hr and applying that standard to rich-burn engines > 500 bhp. NPS, Notice of Intent to Present Rebuttal Technical Testimony, Ex. D, 20.2.50.113.B. NMAC, Tbl. 1. For new natural gas-fired spark-ignition engines, NPS proposed: (i) adding a NO<sub>x</sub> standard for ≤ 500 bhp lean-burn

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<sup>5</sup> As discussed in the Rebuttal NOI, water injection is not a viable control strategy for Kinder Morgan’s turbines. *See* Rebuttal NOI, Ex. XIII, at 3. For Kinder Morgan’s General Electric turbines, there is no water injection system available. *Id.* The same is true for most Solar Saturn units (the other branch of turbine that Kinder Morgan uses). *Id.* Even where water injection might be theoretically viable for certain Saturn units, the corresponding carbon monoxide emission standard would need to be adjusted and the feasibility and wisdom of using the necessary amount of water for such a system in arid New Mexico would need to be evaluated. *Id.*

engines, (ii) adding NO<sub>x</sub> standards for ≤ 500 bhp rich-burn engines, and (iii) lowering the originally proposed 0.50 g/bhp-hr standard applicable to rich-burn engines > 500 bhp to 0.20 g/bhp-hr. *Id.* Tbl. 2.<sup>6</sup> For existing natural gas-fired combustion turbines, NPS proposed: (i) lowering the NO<sub>x</sub> standard for ≥ 1,000 – < 5,000 bhp units to 25 ppmvd, (ii) lowering the NO<sub>x</sub> standard for ≥ 5,000 – < 15,000 bhp units to 15 ppmvd, (iii) lowering the NO<sub>x</sub> standard for ≥ 15,000 bhp units to 15 ppmvd, and (iv) adding a NO<sub>x</sub> standard for ≥ 60,000 bhp units of 9 ppmvd. *Id.* Tbl. 3. NPS also proposed, during hearing, that certain four-stroke lean-burn engines that would be subject to a 2 g-hp/hr standard under the Department’s proposal should instead be subject to, at the highest, a 1.2 g-hp/hr standard. Hearing Transcript, Vol. 8, 2396:14-19.<sup>7</sup>

These proposals were based at least in part on the regulatory requirements of other states, including Colorado and Pennsylvania. The Department’s rejection of the proposals reflect, however, that the regulatory programs of those states include exemptions or apply narrowly to certain categories of regulated units such that blanketly adopting the requirements in New Mexico would not be advisable. *See* Hearing Transcript, Vol. 6, 1701:12–1702:5.

NPS’s proposals would also result in unreasonably high costs of compliance. To illustrate, we reiterate the cost-effectiveness analyses related to the Department’s originally-proposed NO<sub>x</sub> limits for certain of Kinder Morgan’s existing units that will be subject to the Proposed Rules that we provided in the Direct NOI, Exhibit VI, at pages 2–6:

- Rio Vista Transmission Compressor Station: Two 1,051 HP turbines, originally subject to 50 ppmvd NO<sub>x</sub> standard. Costs to control:
  - ~\$974,508 per ton of NO<sub>x</sub> reduced for one unit
  - ~\$830,527 per ton of NO<sub>x</sub> reduced for the other unit

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<sup>6</sup> Note that, during hearing, NPS withdrew its proposal pertaining to smaller engines, and merely recommended that the Board “go back and visit [standards for engines smaller than 1,000 horsepower] in the future.” Hearing Transcript, Vol. 8, 2394:11–2395:2.

<sup>7</sup> Clean Air Advocates advanced a similar proposal during hearing testimony. Hearing Transcript, Vol. 9, 2976:8-23.

- Caprock Transmission Compressor Station:<sup>8</sup> Two 5,000-7,000 HP turbines; originally subject to 50 ppmvd NO<sub>x</sub> standard. Costs to control:
  - ~\$80,398 per ton of NO<sub>x</sub> reduced for one unit
  - ~\$54,935 per ton of NO<sub>x</sub> reduced for the other unit
- Monument Transmission Compressor Station: Two, two-stroke lean-burn engines of approximately 1,000 HP; originally subject to 0.50 g/bhp-hr NO<sub>x</sub> standard. Costs to control:
  - ~\$72,527 per ton of NO<sub>x</sub> reduced for one unit
  - ~\$125,428 per ton of NO<sub>x</sub> reduced for the other unit
- Washington Ranch Transmission Compressor Station: Two, two-stroke lean-burn engines of approximately 4,500 HP; originally subject to 0.50 g/bhp-hr NO<sub>x</sub> standard. Costs to control:
  - ~\$10,392 per ton of NO<sub>x</sub> reduced for one unit
  - ~\$30,395 per ton of NO<sub>x</sub> reduced for the other unit

Because NPS proposed even lower NO<sub>x</sub> limits for existing turbines than the Department originally proposed, its proposal would only further exacerbate the cost concerns for the Kinder Morgan's units at Rio Vista and Caprock. NPS also recommended maintaining the originally-proposed standard applicable to the engines at Monument and Washington Ranch. As demonstrated above, that standard would result in unreasonably high control costs.

We also reiterate our testimony regarding the Department's originally-proposed 25 ppmvd NO<sub>x</sub> standard for the smallest category of *new* turbines under the Proposed Rules. *See* Direct NOI,

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<sup>8</sup> In its rebuttal testimony, the Department questioned our methodology for calculating costs to control the turbines at Caprock. NMED Rebuttal Ex. 1, at 45–48; NMED Rebuttal Ex. 5. In response, we provided surrebuttal testimony at the hearing demonstrating that, even after updating our cost analysis to address the Department's concerns (which, to be clear, we are not conceding were justified), costs remained exorbitantly high. Hearing Transcript, Vol. 6, 1827:16–1828:15, 1831:4–1833:1.

Ex. VI, at 10 (explaining that there is no manufacturer that sells turbines in the 1,000–3,999 bhp range that meet 25 ppmvd of NO<sub>x</sub>); Rebuttal NOI, Ex. XIII, at 1–2 (same). Because new turbines of this size do not meet the 25 ppmvd standard, meeting the standard would require the installation of SCR, which is extremely expensive. Direct NOI, Ex. VI, at 10–11 (explaining that installing SCR on the existing turbine units at Rio Vista would cost close to \$1 million per ton of NO<sub>x</sub> reduced, and that similar if not higher costs would be expected for new units).<sup>9</sup> Accordingly, NPS’s proposal to maintain the originally-proposed 25 ppmvd NO<sub>x</sub> standard for new turbines ≥ 1,000 and < 5,000 turbines is unworkable.

For the foregoing reasons, Kinder Morgan supports the Department’s rejection of NPS’s proposals and respectfully requests that the Board adopt the Department’s proposed Tables 1, 2, and 3 for engines and turbines as reflected in the January 18 Draft.

***ii. Alternative Compliance Options (20.2.50.113.B.(10), B.(11) NMAC)***

In the Department’s rebuttal draft of the Proposed Rules, the Department added two options for alternative compliance with the engines and turbines emissions standards: (i) the alternative compliance plan in Paragraph (10) of Subsection B of 20.2.50.113 NMAC, and (ii) the alternative emissions standard in Paragraph (11) of Subsection B of 20.2.50.113 NMAC. *See* NMED Rebuttal Ex. 2, 20.2.50.113.B.(10), B.(11) NMAC. The Department made certain refining edits to these proposals in the September 16 Draft, and, in the December 16 and January 18 Drafts, retained the proposals as set out in the September 16 Draft. *See* September 16 Draft, 20.2.50.113.B.(10), B.(11) NMAC; December 16 Draft, 20.2.50.113.B.(10), B.(11) NMAC; January 18 Draft, 20.2.50.113.B.(10), B.(11) NMAC. Kinder Morgan strongly supports the addition of these two

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<sup>9</sup> During the hearing, the Department noted that, based on feedback from Solar Turbines, the smallest category of turbine under the Proposed Rules—which by the time of the Department’s testimony was subject to a 150 ppmvd standard rather than a 50 ppmvd standard, as originally proposed—should in fact encompass turbines up to 4,100 HP. Hearing Transcript, Vol. 6, 1689:8-17. The Department explained that this change was necessary to address an issue with a Solar turbine “that doesn’t have the space allotment for . . . dry NO<sub>x</sub> burn application.” *Id.* at 1689:18-21.

alternative compliance options as proposed in the January 18 Draft, and respectfully requests that the Board adopt both options. Without these two alternative compliance options, the emissions standards would be technical infeasible and/or cost-prohibitive in many cases.

The alternative emissions standard option set out Paragraph (11) of Subsection B of 20.2.50.113 NMAC is particularly important. Where a certain emission standard under Table 1 or Table 3 is technically impracticable or economically infeasible as applied to a certain engine or turbine, Paragraph (11) would permit the owner or operator to submit a request to the Department to operate under an alternative emission standard for that unit. January 18 Draft, 20.2.50.113.B.(11) NMAC. These requests are subject to multiple layers of review, including by an independent third party, and would be made available for public comment. *Id.* at 20.2.50.113.B.(11)(d) NMAC (requiring compliance with Subparagraphs (a) through (c) of Paragraph (10) of Subsection B of 20.2.50.113 NMAC). Among other things, a request would require a demonstration showing why it is not technically practicable or economically feasible for the unit to meet the applicable emissions standards. *Id.* at 20.2.50.113.B.(11)(a) NMAC. For purposes of demonstrating economic infeasibility in such a request, the Department confirmed that an operator could use standard methodologies developed by EPA, for example, under EPA's Cost Control Manual to determine cost-effectiveness. Hearing Transcript, Vol. 6, 1703:9-17 ("MS. GUTIERREZ: . . . With regard to a showing of economic feasibility in Paragraph B.(11), is it the Department's expectation that an operator could show and should use standard methodologies developed by EPA, for example, under its Cost Control Manual to determine cost effectiveness? MS. BISBEY-KUEHN: Yes. That would be an acceptable method."). Cost-effectiveness thresholds above which a certain control technology will be considered infeasible can vary, but, in general and as recognized by the Department, are in the range of \$3,000 to \$7,500 per ton of pollutant reduced. *Id.* at 1703:19–1704:19. Kinder Morgan undertook research to evaluate the

cost-effectiveness benchmarks employed by the Department (in a context separate from this one) and in other jurisdictions. *See* Direct NOI, Ex. VI, at 11–14 (compiling cost-effectiveness benchmarks). The results of this research are summarized in the following chart that counsel for Kinder Morgan presented during opening statements:

Cost/ton threshold determined reasonable	Context/Agency
\$7,000 / ton of NOx	NMED, Regional Haze Rulemaking (2019)
\$6,400* / ton of NOx	Colorado Air Quality Control Commission, Regulation of Then-Existing Rich Burn Reciprocating Internal Combustion Engines
\$5,500* / ton of NOx	New York State Department of Environmental Conservation, Existing Source RACT
\$3,750 / ton of NOx	Pennsylvania Department of Environmental Protection, Major Source RACT III
\$7,500 / ton of VOC	Pennsylvania Department of Environmental Protection, Major Source RACT III
\$6,400* / ton of VOC	Colorado Air Quality Control Commission, Regulation of Then-Existing Lean Burn Reciprocating Internal Combustion Engines
\$5,700 / ton of VOC	EPA, Standards of Performance for Equipment Leaks, synthetic organic chemicals manufacturing industry and petroleum refineries (relied upon by the Obama Administration in 2016 NSPS OOOOa rule)
\$5,299 / ton of VOC	EPA, NSPS OOOO (Regarding control of wet seals, “[t]he VOC control effectiveness for the processing and transmission/storage segments were \$5,299 and \$31,133 respectively. Therefore, Regulatory Option 3 was rejected due to high VOC cost effectiveness.”)

\* Adjusted to today using the Bureau of Labor Statistics’ calculation tool.

*See* Kinder Morgan Opening Statement (Sept. 19, 2021).

A request for an alternative emissions standard would also require a technical analysis specifying the emission reductions that can be achieved from the unit, which must include “an analysis of any previous modifications of the source and a determination whether such modifications meet the definition of a reconstructed source, such that the source should be considered a new source under federal regulations.” January 18 Draft, 20.2.50.113.B.(11)(c) NMAC. During hearing testimony, the Department clarified that it expects that operators will rely on EPA guidance to determine whether a modification has occurred under federal law. Hearing Transcript, Vol. 6, 1704:21–1705:8. It also clarified that the intent of this requirement is to ensure that, following the effective date of the Proposed Rules, a unit has not been reconstructed under federal law such that it should be treated as a new source. *Id.* at 1705:9–1706:9.

As demonstrated by Kinder Morgan’s technical testimony submitted in this proceeding, this provision is critically important to accommodate circumstances in which a particular engine or turbine unit cannot meet the emissions standards of the Proposed Rules due to unit- and/or site-specific considerations. To illustrate, insufficient space may exist to install controls because other equipment is located outside the exhaust point of an engine. Direct NOI, Ex. VI, at 7. In such a circumstance, the entire engine site would need to be reconfigured to accommodate control technology. *Id.* This process could not only be exorbitantly expensive, but may also be technically impracticable due to the size of the unit. *Id.* Certain units may also currently be operating very close to the proposed standard such that installing elaborate control technology to achieve the small reductions needed to meet the standard would simply not be cost-effective. *Id.* Finally, certain units may be of a vintage that would necessitate the use of SCR, which is extremely expensive. *See* Rebuttal NOI, Ex. XIII, at 7–8; *see also* Hearing Transcript, Vol. 6, 1825:8–1828:15, 1831:4–1833:15. The Department acknowledged these considerations and the importance of the provision, stating, “this [alternative compliance option] is an important flexible option for those existing engines and turbines that are very old, and that where it may not be cost effective to necessarily retrofit with a new type of control device . . . .” Hearing Transcript, Vol. 6, 1681:17-20.

It is also important to note that, even if Kinder Morgan requests an alternative emission standard for certain of its units, it will still reduce a substantial amount of emissions from its engine and turbine fleet under the Proposed Rules.

**c. The Department Proposed A Common Sense Revision to 20.2.50.112 NMAC (General Provisions) During The Hearing That the Board Should Adopt**

During the hearing, the Department determined to strike the portion of 20.2.50.112.B.(2) NMAC requiring monthly monitoring. Hearing Transcript, Vol. 5, 1586:25–1587:22. It reasoned that, because (1) “each section of the [Proposed Rules] contains specific monitoring requirements for that particular equipment or process,” and (2) the general monitoring requirement set forth in

Section 112 was not “intended to be something unique from the other monitoring required in the [Proposed Rules],” “the Department [was] willing to remove that monthly requirement from the general provisions and rely on the monitoring specified in each section of the Proposed Rules[.]” *Id.* at 1587:6-18. The Department explained: “[This change] clarifies what the monitoring requirements are. There is sufficient and effective monitoring in each section, and so we agree that that requirement can be struck.” *Id.* at 1587:18-21. The Department has since incorporated this change into the Proposed Rules. January 18 Draft, 20.2.50.112.B.(2) NMAC. Kinder Morgan asks the Board to adopt this provision as proposed in the January 18 Draft.

**d. Kinder Morgan Encourages the Board to Adopt the Following Additional Rule Revisions**

In addition to the issues discussed above, Kinder Morgan provides the following comments on certain more-minor revisions to the Proposed Rules:

- ***Scope (20.2.50.2 NMAC):*** Kinder Morgan supports the Department’s addition of a clear process by which new areas of New Mexico can become subject to the Proposed Rules following the effective date. January 18 Draft, 20.2.50.2.A. NMAC. Prior to this addition, the Proposed Rules would have applied—automatically—to areas that exceed 95% of the ozone standard at any point following the effective date of the Proposed Rules. That approach would have been inconsistent with the New Mexico Air Quality Control Act (as amended by Senate Bill 8) (the “Act”), which requires notice and a public hearing rulemaking for any rule amendment. It also would have been unworkable as a practical matter because operators newly subject to the Proposed Rules’ requirements would have had no time for implementation. In essence, the Department’s addition of a process avoiding these outcomes was necessary to protect the due process rights of operators of sources that become subject to the Proposed Rules following the effective date. For additional discussion of this issue, see the Non-Technical Statement, at pages 11–15.

- **Definitions (20.2.50.7 NMAC):** Kinder Morgan supports the Department’s revised definition of “gathering and boosting station,” deleted definition of “natural gas compressor station,” and added (and subsequently revised) definition of “transmission compressor station.” January 18 Draft, 20.2.50.7.P. NMAC, 20.2.50.7.CCC. NMAC.
- **Engines and Turbines (20.2.50.113 NMAC):** Kinder Morgan supports the Department’s revisions to the provisions addressing emergency engines, aligning treatment of such engines with federal law. January 18 Draft, 20.2.50.113.B.(9), C.(6), D.(3) NMAC. Kinder Morgan also supports the Department’s clarification that an alternative calculation methodology can be used to calculate engine load when manufacturer’s rated brake specific fuel consumption is not available. January 18 Draft, 20.2.50.113.C.(4) NMAC.

**III. Kinder Morgan Requests Revisions to the Scope Section of the Proposed Rules Because, By Statute, the Proposed Rules Can Only Apply to Areas in which Ozone Concentrations Exceed 95% of the Primary NAAQS for Ozone.**

Section 74-2-5.C of the Act is the Board’s authority for this rulemaking. That section provides:

If the environmental improvement board or the local board determines that emissions from sources within the environmental improvement board’s jurisdiction or the local board’s jurisdiction cause or contribute to ozone concentrations in excess of ninety-five percent of the primary national ambient air quality standard for ozone promulgated pursuant to the federal act, the environmental improvement board or the local board shall adopt a plan, including rules, to control emissions of oxides of nitrogen and volatile organic compounds to provide for attainment and maintenance of the standard. Rules adopted pursuant to this subsection shall be limited to sources of emissions within the area of the state where the ozone concentrations exceed ninety-five percent of the primary national ambient air quality standard.

N.M.S.A. § 74-2-5.C.

Section 74-2-5.C of the Act is unambiguous. It requires that, if the Board determines that sources of emissions within the Board’s jurisdiction cause or contribute to ozone concentrations exceeding 95% of NAAQS, the Board must then adopt a plan, including rules, to control ozone

precursor (*i.e.*, NO<sub>x</sub> and VOCs) emissions in order to attain and/or maintain the ozone standard. The Act is clear, however, that the only sources that can be subject to any such ozone precursor rules are sources located in an area of the State in which ozone concentrations actually exceed 95% of NAAQS.

The Department evidently disagrees with the above-described interpretation. Under the Department's January 18 Draft, the Proposed Rules will apply to "sources located within areas of the state under the board's jurisdiction, that, as of the effective date of this Part or anytime thereafter, are causing or contributing to ambient ozone concentrations that exceed ninety-five percent of the [NAAQS] for ozone, as measured by a design value calculated and based on data from one or more department monitors." January 18 Draft, 20.2.50.2 NMAC. As of the effective date, the Department has proposed to apply the Proposed Rules to sources in Chaves, Dona Ana, Eddy, Lea, Rio Arriba, Sandoval, San Juan, and Valencia Counties. *Id.* As demonstrated by the Department's own testimony, however, the design value for Rio Arriba is currently *below* 95% of NAAQS. *See* NMED Amended Ex. 4 (Sept. 20, 2021), at 6. Further, there is no ozone monitor in Chaves County, so its design value is unknown. *Id.* at 4.

When prompted to explain why the Department has chosen to include these two counties, the Department's technical witness, Mr. Michael Baca, explained that, "the stated purpose of the regulations adopted by the Board under the [Act] is to provide for the attainment and maintenance of the [ozone] standard. To achieve this, the purpose of the statute directs the Board to regulate sources within areas of the state that cause or contribute to ozone concentrations exceeding 95 percent of the NAAQS. The statute does not say that the regulations can only apply to counties with monitors showing concentrations exceeding 95 percent, so, logically, the boundaries of any designated nonattainment area would not be restricted to county lines or counties with monitors." Hearing Transcript, Vol. 1, 299:20–300:6. Kinder Morgan does not dispute that the statute does

not prescribe how ozone concentrations are to be measured to determine where ozone precursor rules may apply. The Department, however, has chosen to determine applicability of the Proposed Rules based specifically on “a design value calculated and based on data from one or more department monitors.” January 18 Draft, 20.2.50.2 NMAC. Applying the Department’s chosen methodology to the plain language of the statute, the Proposed Rules cannot apply to sources in Rio Arriba or Chaves counties.

When counsel for NMOGA asked Mr. Baca about his interpretation of statute, however, Mr. Baca testified that the second sentence of Section 74-2-5.C does not establish any geographic limit on the areas in which the Board’s ozone precursors rules may be applied. Hearing Transcript, Vol. 1, 319:24–320:8. Rather, he explained, that sentence “just says it’s limited to sources with emissions, within any area of the state where ozone concentrations exceed. So it could be any emissions anywhere in the state that – within the area of the state that the ozone concentrations exceed 95 percent, . . . So the rules are limited to the sources within the Department’s jurisdiction that can – within areas of the state where ozone concentrations are monitored at 95 percent. So the rule can apply to any part of any area of the state where monitoring – and reasonably be attributed as exceeding 95 percent of the standard.” *Id.* at 319:8–320:25. The Department appears to take the position that, so long as emissions from a source can reasonably be attributed to ozone concentrations in excess of 95% of NAAQS anywhere in the state of New Mexico, such sources can be made to comply with the Proposed Rules. This interpretation is in direct conflict with the plain language of the statute and should be rejected. *See* N.M.S.A. § 74-2-5.C. (“Rules adopted pursuant to this subsection shall be limited to sources of emissions within the area of the state where the ozone concentrations exceed ninety-five percent of the primary national ambient air quality standard.”) (emphasis added).

Accordingly, Kinder Morgan requests the following revision to 20.2.50.2 NMAC:

8     **20.2.50.2**         **SCOPE:** This Part applies to sources located within areas of the state under the board's  
9 jurisdiction that, as of the effective date of this Part or anytime thereafter, ~~are causing or contributing to have~~ ambient  
10 ozone concentrations that exceed ninety-five percent of the national ambient air quality standard for ozone, as  
11 measured by a design value calculated and based on data from one or more department monitors. As of the effective  
12 date, sources located in the following counties of the state are subject to this Part: ~~Chaves,~~ Dona Ana, Eddy, Lea,  
13 ~~Rio Arriba,~~ Sandoval, San Juan, and Valencia.

A proposed statement of reasons justifying this revision is shown in **Exhibit A**, attached hereto.

**IV. One Additional Matter for the Board's Consideration: The Board and the Department Should Work Cooperatively With EPA in the Development of EPA's Forthcoming Rules to Ensure That Compliance Obligations for Operators Are Clear.**

On November 2, 2021, EPA published draft "Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review." See "EPA Proposes New Source Performance Standards Updates, Emissions Guidelines to Reduce Methane and Other Harmful Pollution from the Oil and Natural Gas Industry" (Nov. 2, 2021), <https://www.epa.gov/controlling-air-pollution-oil-and-natural-gas-industry/epa-proposes-new-source-performance>. This proposal was subsequently published in the federal register on November 15, 2021 ("NSPS Proposal"). See 86 Fed. Reg. 63,110 (Nov. 15, 2021). The NSPS Proposal sets out three actions proposed under the Clean Air Act. 86 Fed. Reg. 63,110, 63,116. First, EPA proposes amendments to the existing NSPS methane and VOC requirements. *Id.* This action will amend the 2016 NSPS subpart OOOOa consistent with the joint resolution of Congress under the Congressional Review Act that was adopted on June 30, 2021. *Id.* Second, EPA proposes to develop and adopt a new NSPS subpart OOOOb to further regulate emissions of methane and VOCs from oil and gas sources that are new, modified, or reconstructed as of November 15, 2021. *Id.* Finally, EPA proposes to develop nationwide methane emission guidelines ("EGs") for existing sources within the oil and gas sector to be housed in a new subpart OOOOc. *Id.* These EGs are intended to inform the development of state plans to establish performance standards for greenhouse gases from oil and gas sources. *Id.*

There is overlap between the Proposed Rules and the NSPS Proposal. Among the equipment and topics that will be addressed in the NSPS Proposal are fugitive emissions, pneumatic controllers, and wet seal centrifugal compressors. *Id.* at 63,117, 63,121.

During the hearing in this proceeding, Kinder Morgan emphasized that consistency with federal law is critically important to creating workable rules for operators, and has raised concerns about the difficulties that compliance with differing federal and state requirements may present. *See* Non-Technical Statement, at 23 (addressing emergency engines); Direct NOI, Ex. VI at 19–20 (addressing emergency engines); Direct NOI, Ex. VII (addressing LDAR); Rebuttal NOI, Ex. XV (addressing LDAR). On the issue of LDAR, in particular, we provided detailed testimony regarding the ways in which minor differences in state and federal LDAR programs can result in substantial administrative burdens for operators with no emissions reductions benefit. *See* Rebuttal NOI, Ex. XV at 1–3.

The Department responded to these concerns, incorporating changes to the Proposed Rules that aligned the Proposed Rules with federal law. *See* January 18 Draft, 20.2.50.113.B.(9), C.(6), D.(3) NMAC, 20.2.50.116.C.(3)(d) NMAC. In light of the NSPS Proposal and the significant impact that the resulting rules will have on oil and gas operators, Kinder Morgan encourages the Department and Board to continue to be responsive to these issues by working proactively with EPA to ensure that—where there are areas of overlapping regulation—operators have a clear path to compliance with both sets of rules.

## CONCLUSION

For the foregoing reasons, Kinder Morgan respectfully requests that the Board adopt the Proposed Rules and accompanying statements of reasons as reflected in **Exhibit A**.

Respectfully submitted this 20th day of January, 2022.

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## CERTIFICATE OF SERVICE

I hereby certify that on January 20, 2022, a true and correct copy of the foregoing **CLOSING ARGUMENT, FINAL PROPOSED RULES, AND STATEMENT OF REASONS OF KINDER MORGAN, INC. AND ITS SUBSIDIARIES AND AFFILIATES, EL PASO NATURAL GAS COMPANY, L.L.C., TRANSCOLORADO GAS TRANSMISSION CO., LLC, AND NATURAL GAS PIPELINE COMPANY OF AMERICA, LLC** was filed with Board Administrator, Pamela Jones, via electronic mail and served via electronic mail on the following:

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